

# Part-I Overview of the Dispute Resolution Mechanism. Chapter I Court System: How the Court System is used as Dispute Resolution Mechanism

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# CHAPTER I

## COURT SYSTEM: HOW THE COURT SYSTEM IS USED AS DISPUTE RESOLUTION MECHANISM

### 1. Overview of the Court System in India

The Indian Constitution though federal in character provides for unitary judicial system. The Supreme Court is the apex court of the country. It was established on 28 January 1950 and consists of 25 judges apart from the Chief Justice of India.<sup>1</sup> All proceedings in the Supreme Court are conducted in English<sup>2</sup> and are open to the public.<sup>3</sup> The seat of the Supreme Court is in Delhi.<sup>4</sup> Except for the chamber, where the judge sits singly, benches of two or more judges hear all matters. Normally five judges hear constitutional matters but in special cases, larger benches are constituted.<sup>5</sup> In addition to the judicial autonomy, the Supreme Court has freedom from administrative dependence. In crisis arising out of diverse situations people approach the apex court for relief.

Below the Supreme Court, there exists high court for every state / union territory. At present, the country is divided into 29 states and 6 union territories (UT).<sup>6</sup> There are 21 high courts in the country, 5 having jurisdiction over more than one state/UT. In few states, due to large geographical area, benches are established outside the principal seat of a high court as shown below:

#### High Courts in India<sup>7</sup>

Name	Year of establishment	Territorial Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
Bombay	1862	Maharashtra, Goa, Dadra & Nagar Haveli and Daman & diu	Bombay (Benches at Nagpur, Panaji, Goa, Aurangabad and

<sup>1</sup> Supreme Court (Number of Judges) Act, 1956, Sec 2.

<sup>2</sup> Constitution of India, Art 348.

<sup>3</sup> *Id.*, Art 145 (cc).

<sup>4</sup> *Id.*, Art 130.

<sup>5</sup> Supreme Court Rules 1966, Order VII.

<sup>6</sup> <http://goirectory.nic.in/fstateut.htm>

<sup>7</sup> Supreme Court Bar Association, 50 Years, *SC Bar Association*, (2000), p. 810.

			Daman & diu)
Calcutta	1862	West Bengal	Calcutta (Circuit Bench at Port Blair)
Delhi	1966	Delhi	Delhi
Guwahati	1948	Assam, Manipur, Nagaland, Tripura, Mizoram & Arunachal Pradesh	Guwahati (Benches at Kohima, Aizwal, Imphal, Shilong and Agartala)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Shimla
Jammu & Kashmir	1928	Jammu & Kashmir	Srinagar and Jammu
Karnataka	1884	Karnataka	Bangalore
Kerala	1958	Kerala & Lakshdweep	Earnakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior & Indore)
Madras	1862	Tamil Nadu & Pondicherry	Madras
Orissa	1948	Orissa	Cuttack
Patna	1916	Bihar	Patna (Bench at Ranchi)
Punjab & Haryana	1966	Punjab, Haryana, Chandigarh	Chandigarh
Rajasthan	1949	Rajasthan	Jodhpur ( Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Ranchi	2000	Jharkhand	Ranchi
Raipur	2000	Chattisgarh	Raipur
Nainital	2000	Uttaranchal	Nainital

In the sphere of the states, high courts have wide powers for issuing directions, writs or orders to all persons or authorities (including the governments), falling under their jurisdiction, whether original or appellate, primarily for the enforcement of fundamental rights.<sup>8</sup> The high court exercises administrative, judicial and disciplinary control over the members of the judicial service of the state.<sup>9</sup> In addition, it is a court of record.<sup>10</sup> Each high court comprises of a Chief Justice and other judges whose number vary from state to state.<sup>11</sup>

The Constitution of India has conferred on the high courts wide powers to administer justice, administer the lower courts, take necessary action when there is a miscarriage of justice, secure the rights and liberties to the people and among others ensure that the administrative machinery

<sup>8</sup> Constitution of India, Article 226.

<sup>9</sup> *Id.*, Article 235.

<sup>10</sup> *Id.*, Article 215.

<sup>11</sup> The sanctioned Judge strength for Kerala High Court is 24 permanent judges including the Chief Justice and 5 additional judges; Bombay High Court has a sanctioned strength of 60 judges; the Rajasthan High Court has 32 sanctioned posts of Judges / Additional Judges; sanctioned strength of judges of the High Court of Allahabad is 95 and so on.

functions according to law. The high court thus occupies a high position of respect, dignity and authority in the modern Indian judicial system.

Just below high courts, in each state/ UT, there are subordinate courts. These represent the first tier of the entire judicial structure. In fact, each state/ UT is divided into districts as units of administration and each district is further divided into *taluks* or *tehsils* comprising certain villages contiguously situated. These are administrative units. The court structure more or less corresponds with these administrative units except in urban areas.

On the criminal side, vertically moving downwards, the highest court is either the Sessions Court, presided over by a Sessions Judge or the court of District & Sessions Judge, who is also the administrative head. He assigns cases to the Additional Sessions Judges. Sessions Court has original, appellate and revision jurisdiction against orders passed by lower courts.

Below the Sessions Courts are the courts of the Chief Judicial Magistrate and Additional Chief Judicial Magistrates. Each of these courts has one or more police stations assigned to it. The designated court decides criminal cases from those police stations.

Below these are the courts of Judicial Magistrates. Judicial Magistrates in India are similar to Justices of the Peace in the United States of America. They deal with such things as breach of public peace, nuisance, dispute of immovable property likely to cause breach of peace.

In addition to the regular criminal courts, there are special courts to deal with cases relating to narcotics, corruption, terrorist, consumer,<sup>12</sup> labour<sup>13</sup> and environment,<sup>14</sup> etc.

Apart from the above, there are special courts established by many central statutes, like, the Anti-Hijacking Act, 1982; the Commission of Sati (Prevention) Act, 1987; the Immoral Traffic (Prevention) Act, 1956; the Juvenile Justice Act, 1986; the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988; the Prevention and Corruption Act, 1988; the Terrorist Affected Areas (Special Courts) Act, 1984; etc to deal with disputes on the subject matter covered by these Acts.

The special courts deals with a specific subject matter of litigation. They, follow almost the same procedure, which is followed by the regular courts with some minor differences necessary for the quicker disposal of the cases.<sup>15</sup>

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<sup>12</sup> *Infra* Chapter 3, p. 72.

<sup>13</sup> *Infra* Chapter 4, p. 115.

<sup>14</sup> *Infra* Chapter 5, p. 157.

<sup>15</sup> *In re The Special Courts Bill*, 1978 (1979) 1 SCC 380.

Special courts are set up not for any special policy commitment or the expertise requirement but for the purpose of speedy disposal. The judges of these courts are often drawn from the judicial services. Appeals against their decisions lie in high court and in some cases even to the Supreme Court.

On the civil side, vertically moving downwards in the hierarchy, we have at the peak, the principle civil court, called the District Court presided over by the district judge. Besides, there are courts of additional district judges to deal with the cases. Both the district judge and the additional district judges are vested with the same powers and appellate jurisdiction against the order or decree of courts subordinate to them.

Below the District Courts are the courts of Civil Judges (Senior Division) and Civil Judges (Junior Division). The "Senior" and "Junior" labels do not have anything to do with the powers of the judges but reflect the nature of the cases. These courts are vested with only original jurisdiction. Appeals against the judgment of the courts of civil judges, whether of senior or junior division lie before the district judge, who either decides the appeal himself or assign it to the court of additional district and sessions judge or additional district judge, whichever exists under him.

In some states / UT, a court of *munsif* / district *munsif*-cum-magistrate / subordinate judge, class-III and the sub-judge, class-II are established at a *taluk* or *tehsil* level, instead of the courts of civil judges (junior division). Immediately above the district *munsif's* court in the hierarchy is the court of subordinate civil judge, class-I instead of the courts of civil judge (senior division).<sup>16</sup> Steps, are being taken to bring uniformity in designation of judicial officers both on civil and criminal side.<sup>17</sup>

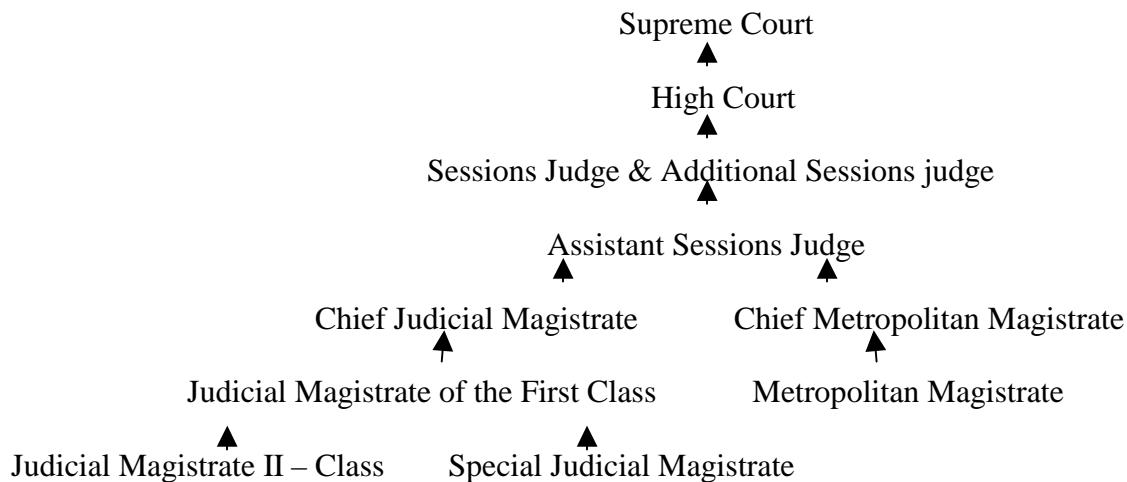
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<sup>16</sup> 118<sup>th</sup> Report of the Law Commission of India, December 1986, at 1.

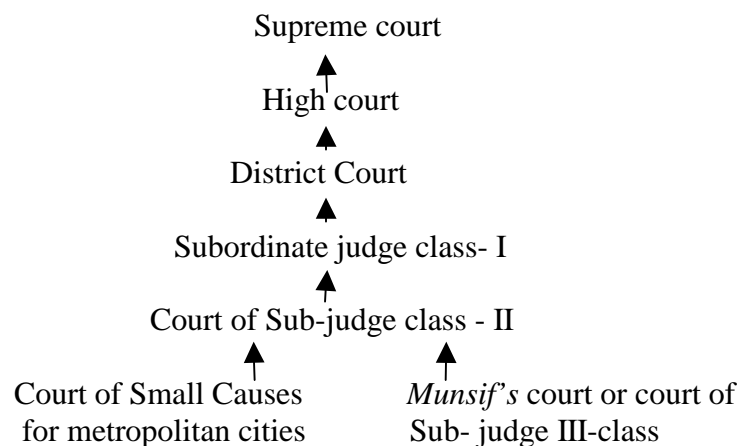
<sup>17</sup> *All India Judges' Association v. Union of India*, AIR 1992 SC 165. In 1989, the All India Judges' Association, filed writ petition before the Supreme Court seeking many reliefs to improve the conditions of service of subordinate Judicial Officers all over the country. The Supreme Court gave directions to Union of India to set up An All India Judicial Service and take all steps to bring about uniformity in designation of Officers both in civil and the criminal side by 31-3-1993.

The above discussed hierarchy of civil and criminal court system may be depicted as under:

**Hierarchy of Criminal judicial system:**



**Hierarchy of Civil Judicial System :**



The organization and growth of a regular hierarchy of courts of justice with the superior courts and inferior courts owes its origin to the advent of the British rule in India. Every court in this chain, subject to the usual pecuniary and territorial jurisdiction, administers the law of the country whether made by Parliament or by the State Legislature.

As a general rule, there is a separation of civil judiciary and criminal judiciary. But if workload is less, the presiding officer presides over both criminal and civil courts. For example, courts of District & Sessions Judge (DSJ) hear both civil and criminal matters.<sup>18</sup>

<sup>18</sup> *Supra* note 16.

## 2. Current situation regarding the use of courts

### I. PENDENCY

As on November 2001, there was a huge pendency of cases in the various courts except in the Supreme Court as is evident from table below:<sup>19</sup>

S. No.	Name of Court	Sanctioned strength of judges	Judges in position	Pending cases
1.	Supreme Court of India	26	25	21,716 (As on 21.11.2001)
2.	High Courts	647	477	35,57,637 (As on 31.10.2001)
3.	District/Subordinate Courts	12,737	19877	2,03,25,756 (As on 31.10.2001) (Except Nagaland)

#### Variation in Pendency of court cases from 1991 to 1998:<sup>20</sup>

Supreme Court – substantially reduced from 104,936 (1991) to 19,806 (1998)

High Courts – increased from 2.65 million (1993) to 2.98 million (1995) and 3.18 million (1997)  
more than 50% in only four high courts –

Allahabad High Court - (0.86 million),

Madras/Chennai High Court - (0.32 million),

Calcutta High Court - (0.28 million),

Kerala High Court - (0.25 million) .

Subordinate courts – fluctuating – 21.8 million (1995), 19.9 million (1996), 20 million (1997)

The following table gives the number of cases pending in subordinate court from 1985-1995:

#### Pendency in subordinate courts from 1985 to 1995:<sup>21</sup>

State / UT	Pendency in Sessions Courts as on 1985	Pendency in District courts & courts sub-ordinate thereto as on 1985	Pendency in Magistrate Courts as on 1985	Pendency in Sessions Courts as on 1995	Pendency in District courts & courts sub-ordinate thereto as on 1995	Pendency in Magistrate Courts as on 1995	The % of increase in pendency of cases from 1985 to 1995
Andhra Pradesh	5,321	4,44,104	1,22,560	28,438	8,01,079	2,47,281	88.26.

<sup>19</sup> Govt. of India, Ministry of Law, Justice & Co. Affairs, Rajya Sabha unstarred question No. 2223, answered on 10.12.2001

<sup>20</sup> Chapter – II, Annual Report 2000-2001, Ministry of Home Affairs; See <http://mha.nic.in/contents>

<sup>21</sup> Source: <http://www.kar.nic.in/fnjpc/cwcm&adr.html>

Assam	4,694	22,525	1,10,349	7,775	46,831	1,53,573	51.33
Bihar	77932	157224	636870	194547	228488	749006	34.40
Gujarat	3758	213928	975916	24995	708048	3145542	224.95
Haryana	2247	86979	104341	9142	210077	181446	106.99
Karnataka	5628	592663	336933	25489	615379	591958	31.82
Madhya Pradesh	19570	226508	665733	65371	434966	1120675	77.78
Maharashtra	20177	589543	1242462	80008	923850	2902196	110.89
Punjab	4176	101958	96712	14669	216240	94562	60.45
Tamil Nadu	6082	442711	275594	12868	472414	261027	3.03
Uttar Pradesh	62449	397202	846577	188402	880362	2048102	138.62
Delhi	3672	85169	397064	18056	118865	377140	5.79

From the above table, it is evident that from 1985 to 1995 increase in the pendency of cases by about 62.1%. The present status of pendency in the subordinate courts is given below:<sup>22</sup>

S. No.	Name of States/UTs	As on	Civil	Criminal	Total
1.	Andhra Pradesh	06/2000	523149	368472	891621
2.	Arunachal Pradesh	06/99	331	1469	1800
3.	Assam	06/2000	47644	114900	162544
4.	Bihar	06/2000	253782	1023614	1277396
5.	Goa	12/2000	26338	12147	38485
6.	Gujarat	06/2000	659723	2544144	3203867
7.	Haryana	06/98	201656	293145	494801
8.	Himachal Pradesh	06/2000	72470	70541	143011
9.	Jammu & Kashmir	06/99	43418	82596	126014
10.	Karnataka	06/2000	664386	400500	1064886
11.	Kerala	06/2000	223489	405020	628509
12.	Madhya Pradesh	06/2000	353745	988530	1342275
13.	Maharashtra	06/2000	862517	1867552	2730069
14.	Manipur	06/99	4524	3614	8138
15.	Meghalaya	06/99	1561	11322	12883
16.	Mizoram	12/2000	817	986	1803
17.	Nagaland	Not Available	Not Available	Not Available	Not Available
18.	Orissa	06/2000	135189	541633	676822
19.	Punjab	12/98	201118	174094	375212
20.	Rajasthan	06/2000	282988	565560	848548
21.	Sikkim	12/98	467	1352	1819
22.	Tamil Nadu	06/2000	545657	279136	824793
23.	Tripura	06/2000	6492	12428	18920
24.	Uttar Pradesh	06/2000	1083451	2397191	3480642
25.	West Bengal	12/99	473325	861754	1335079
26.	And. & Nicobar	12/99	580	26790	27370
27.	Chandigarh	12/98	12961	32206	45167
28.	Dadra & N. Haveli	06/2000	326	1238	1564
29.	Daman & Diu	12/2000	642	742	1384
30.	Delhi	12/2000	153261	392705	545966
31.	Lakshadweep	12/2000	87	104	191
32.	Pondicherry	06/2000	6306	7871	1417
	Total		6842400	13483356	2032575

#### Pendency in the high courts<sup>23</sup>

<sup>22</sup> *Supra* note 19.



High court of:	Total number of cases pending			
	For more than 2 years as on 31.12.1999	As on 31.12.1999	For more than 10 years as on 31.12.1999	For more than 3 years as on 30.6.2001 <sup>24</sup>
Allahabad	6,02,292	8,15,026	2,01,460	67,536
Andhra Pradesh	7,883	1,50,222	2,823	16,622
Bombay	1,55,982	2,84,203	28,404	22,457
Calcutta	2,59,054	3,10,914	1,46,476	16,764
Delhi	1,07,427	1,78,186	33,774	13,769
Gauhati	19,790	38,702	162	1,926
Gujarat	87,753	1,43,274	18,592	9,957
Himachal Pradesh	6,367	11,928	37	1,383
Jammu & Kashmir	44,207	70,336	2,392	3,567
Karnataka	29,214	84,486	1,081	5,827
Kerala	98,512	3,08,237	533	45,631
Madhya Pradesh	56,176	1,06,293	5,050	12,404
Madras	1,29,267	3,55,382	9,655	21,924
Orissa	60,994	1,17,339	3,313	28,406
Patna	35,880	82,697	6,657	4,028
Punjab & Haryana	1,22,672	1,84,970	33,791	18,012
Rajasthan	62,453	1,22,899	6,674	14,531
Sikkim	11	206	2	16
TOTAL	18,85,934	32,04,083	5,00,876	3,04,760

The pendency of cases in the high courts, which was 2.651 million as on 31.12.1993, increased to 2.981 million as on 31.12.1995 and further increased to about 3.181 million as on 31.12.1997.<sup>25</sup> The pendency of cases as on 31.12.1999 was 3.365 millions. This increased to 3.557 millions as on 31.10.2001 which is evident from the above table.

## II. INSTITUTION OF SUITS

**No. of cases instituted in the high courts during period of one year are as under:**<sup>26</sup>

Sl. No.	Name of the High Court	DURING THE YEAR 1998			DURING THE YEAR 1999			DURING THE YEAR 2000		
		No. of cases registered	No. of cases disposed of	No. of cases pending	No. of cases registered	No. of cases disposed of	No. of cases pending	No. of cases registered	No. of cases disposed of	No. of cases pending
1	Allahabad	183740	146579	796129	198071	179174	815026	34443	47672	818796
2	Andhra Pradesh	157007	144367	145851	137437	133066	150222	57833	63891	155351

<sup>23</sup> Source: Ministry of Law, Justice & Company Affairs, Government of India, New Delhi (2000).

<sup>24</sup> *Supra* note 19.

<sup>25</sup> *Pending Cases Involving Government In Delhi High Court*, Ministry of Law, Justice & Company Affairs, Department of Justice, Rajya Sabha Starred Question No 332, answered on 12.12.2000, <http://164.100.24.219/rsq/quest.asp?qref=37489>

<sup>26</sup> ANNEXE- II, Minister of Law, Justice & Company Affairs, Rajya Sabha Unstarred Question No 1671, answered on 12.03.2001, <http://164.100.24.219/rsq/quest.asp?qref=44513>

3	Bombay	99789	84881	252526	111491	79814	284203	28567	22970	289800
4	Calcutta	77543	64594	295158	67733	51977	310914	32730	25585	313172
5	Delhi	71477	61887	173020	70874	65708	178186	-	-	-
6	Gauhati	21412	17540	38037	5030	4365	38702	-	-	-
7	Gujarat	58571	56422	121532	73801	52059	143274	10959	12735	141498
8	Himachal Pradesh	10870	9665	14557	9882	9345	11928	5711	4219	13420
9	J & K	28886	34275	93256	26441	49361	70336	10710	17010	64036
10	Karnataka	75336	120653	90072	84951	90537	84486	45155	39872	89768
11	Kerala	137549	103579	284231	149302	125296	308237	84514	69021	323730
12	Madhya Pradesh	89139	78719	93551	92625	79883	106293	45499	37737	114057
13	Madras	136331	121581	341369	143551	129538	355382	36588	38402	353568
14	Orissa	54431	36926	102402	49010	34073	117339	11184	8949	119574
15	Patna	103985	105833	82818	99605	99730	82697	102045	62869	85193
16	Punjab & Haryana-	132472 -	131306	171837-	148871	135738	184970	72836	46737	211063
17	Rajasthan	61613	52764	107265	63503	47879	122899	11190	10827	123262
18	Sikkim	1076	699	472	485	751	206	332	329	209

No. of cases instituted in the Supreme Court of India during the one year period are as under:<sup>27</sup>

CLASSIFICATION	Registered during the period 1.1.1998 to 31.12.1998
Admission Matters	32769
Regular Matters	3790
<b>Total</b>	<b>36559</b>

### III. CRIMINAL JUSTICE ADMINISTRATION

#### SNAPSHOTS – 1998

A total of 6.1 million cognizable cases<sup>28</sup> under the Indian Penal Code, 1860 (IPC) and the Special and Local Laws (SLL) - such as the Arms Act, 1959; the Narcotic and Psychotropic Substances Act, 1988; the Immoral Traffic (Prevention) Act, 1956; etc., - were registered by the police in India during 1998. Thus there has been 3 % decrease over the previous year, mainly due to a lower registration of SLL cases. <sup>29</sup>

<sup>27</sup> [http://lawmin.nic.in/An\\_rep/Chapter3.htm](http://lawmin.nic.in/An_rep/Chapter3.htm)

<sup>28</sup> That is, cases in which the police can arrest a suspected offender without obtaining a warrant.

<sup>29</sup> In most parts of the world, crime is studied in terms of the *crime rate*, which denotes diffusion of crime over blocks of population rather than over geographical areas.

Offences, under the Indian Penal Code (IPC) increased by nearly 4 %<sup>30</sup> whereas there was 8 % drop in respect of SLL crimes. However, there was 35 % rise in the number of murders during 1988-98. Six states, including Uttar Pradesh, Madhya Pradesh, Bihar, Maharashtra and West Bengal alone contributed two-thirds of the cases reported during 1998. Property disputes formed the single largest factor behind the crimes. Kidnapping and abduction accounted for more than 23,000 cases in 1998. This represented an almost 50 % increase during the decade. 9 % rise in robberies was also witnessed.

A 65 % rise was noted in the number of incidents of rape during the decade that ended in 1998. An average of about 15,000 rape cases are registered in India each year. At the end of 1998, more than 48,000 rape trials were pending. The more dismaying was the fact that less than 5 % of the cases disposed of by courts ended in conviction during 1997-98.<sup>31</sup>

#### SNAPSHOTS – 1999

As on July 31, 1999, out of 20,106,882 cases 13,250,329 criminal cases were pending in the subordinate courts of the country. Statistics reveal that there is almost one cognizable crime committed every seven seconds, one penal offence every twenty seconds, a property crime every minute, theft every one and half minutes, violent crime every two minutes, burglary every four minutes, riot every five minutes, robbery every fourteen minutes, murder every fifteen minutes, rape every fifty two minutes, molestation every twenty six minutes, dowry death every one hour forty two minutes, kidnapping or abduction every forty three minutes, an act of eve-teasing every fifty one minutes and an act of cruelty towards women every thirty three minutes.<sup>32</sup>

#### CRIMES UNDER SPECIAL LAWS

(1) The number of cases registered and the number of cases in which accused were convicted and acquitted after the enactment of Narcotic Drugs and Psychotropic Substances Act, 1985, i.e. with effect from 15.11.1985 to 30.11.1995 is as under:

Year	Case registered	Cases in which Culprits convicted	Cases in which accused acquitted	Pending cases
1985	715	65	510	140

<sup>30</sup> *Crime in India*, National Crime Records Bureau (NCRB), 1998, New Delhi, at 45.

<sup>31</sup> R.K. Raghavan, *Crime in India*, Frontline, July, 7, 2000, at 23.

<sup>32</sup> Justice Sethi, Hafeezur Rehman Memorial Lecture on '*Criminal justice-problems and challenges*' AMU, The Milli Gazette, Aligarh Muslim University, India, Jan 14, 2002, Vol.1, No. 22.

1986	2290	159	1074	1057
1987	1403	160	406	837
1988	1392	213	285	894
1989	1346	160	267	919
1990	1421	227	290	904
1991	1187	106	113	968
1992	902	144	75	683
1993	761	141	14	606
1994	701	49	6	646
1995	736	63	3	670

From above table it is evident that pendency of cases, each year is increasing, while at the same time, there is a sharp decline in the conviction rate. From 9.09% of conviction in 1985, it stood at 15.99% in the year 1990. In the year 1995, it again fell and reached to 8.55%.

(2) The age-wise pendency of cases in the Supreme Court & high courts is as under: <sup>33</sup>

Court	Pending for less than 5 years	Pending for 5-10 years	Pending for over more than 10 years
Supreme Court	1083	77	na
High courts	22371	12156	56889

(3) Performance of the Central Bureau of Investigation (CBI) is as under: <sup>34</sup>

Number of :	30.4.2001	30.4. 2001	30 .4. 2000	Whole of 1999	Whole of 2000
Prosecutions launched	22		33	627	634
Public Servants involved in cases registered	43	127	307	892	934
Disproportionate Assets Cases registered	2	7	8	51	79
Trap Cases registered	14	24	13	161	179
Intelligence Reports processed relating to corruption by the agency	37	43	22	568	434
Cases registered by the Agency	68	120	70	1195	1116
Cases registered on orders of Supreme Court & high courts	7				
Pendency of Trial Cases	6160	6216	6089		
Cases Referred For RDA <sup>35</sup>	14		49	307	283
Disposal of RDA Cases	23	37	20		
Disposal From Investigation	52	60	49		
Disposal From Trial	42	28	32		
Cases disposed of in courts	132		130	498	509

<sup>33</sup> <http://164.100.24.219/rsq/quest.asp?qref=15179>

<sup>34</sup> Performance of CBI in April, 2001 - A Glance, <http://cbi.nic.in/perfapr01.htm>

<sup>35</sup> Regular Departmental Action (RDA) on various charges of misconduct.

<b>Acquittals</b>	31		30	197	132
<b>Convictions by the court</b>	76		94	249	326
<b>Pendency of Investigation</b>	1753				

(4) CBI cases pending trial in different courts for commission of offences under Prevention of Corruption Act, 1956 are as under:<sup>36</sup>

<b>S. No.</b>	<b>Duration of Pendency</b>	<b>No. of Pending Cases</b>
1.	Less than 2 years	640
2.	2-5 Years	764
3.	5-10 Years	750
4.	10-15 Years	277
5.	15-20 Years	127
6.	20-25 Years	30
7.	25-30 Years	5
8.	Over 30 Years	0
	<b>Total</b>	2593

#### **IV. FUNDING ASPECT OF COURT SYSTEM**

##### **Budgetary allocation for judiciary:<sup>37</sup>**

For the year 2000-2001, the Ministry of Law, Justice & Company Affairs was allocated Rs. 960 million as plan-expenditure and Rs. 3389.4 million as non-plan expenditure. Out of this, the Ministry provided:

1. Rs. 351.6 million for secretariat expenditure of the departments and networking of the Department of Justice with the Supreme Court and high courts.
2. Rs. 10 million for the expenses of National Commission to review the working of the Constitution.
3. Rs. 53.6 million for carrying out translation work in the courts and for running unified litigation agency in the Supreme Court of India, responsible for conduct of cases in the Supreme Court on behalf of the central and state governments.
4. Rs. 175 million to Income Tax Appellate Tribunals set up in the country under the provisions of the Income Tax Act, 1961 to hear appeals against decisions and orders of the Chief Commissioners of Income Tax, Director General of Income Tax (Appeals) and Deputy Commissioner of Income Tax (Appeals).

<sup>36</sup> <http://cvc.nic.in/vsevc/cbipend.htm>

<sup>37</sup> [www.indiabudget.nic.in](http://www.indiabudget.nic.in)

5. Rs. 210 million to the National Judicial Academy set up as a registered society in 1993. the provision is mainly for expenditure on computerization and networking of courts in four metropolitan cities of Chennai, Delhi, Kolkata and Mumbai.
6. Rs 25 million to the International Centre for Alternative Dispute Resolution set up to propagate, promote and popularize the settlement of domestic and international disputes by different modes of alternative dispute resolution.
7. Rs. 21.5 million to union territories for providing infrastructural facilities to judiciary.
8. Rs. 116.1 million to law officers, legal advisers, counsels engaged in legal aid to the poor and those engaged in National Judicial Pay Commission.
9. Rs. 583 million to the Centrally sponsored scheme for development of infrastructure facilities for the judiciary - under implementation since 1993-94. the scheme includes construction of buildings, both official and residential, covering high courts and district courts.
10. Rs. 60 million as grant-in-aid has been sanctioned for National Legal Service Authority (NALSA) for year 2001-2002 for allocating funds to the state and district authorities, to spread legal literacy and provide *Lok Adalats* as an alternative forum of adjudication of disputes.<sup>38</sup>

### 3. Parties' viewpoints with regard to the Court System

The parties' viewpoints with respect to the court system in India can be best reflected from the reports submitted by the Law Commission of India and other committees who are constituted annually to examine various loopholes in the law and suggest measures to meet the situation. These commissions take into account views and experiences of diverse sections of people belonging to socio-legal circles. These reports generally reflect the sentiments of general public and ordinary litigants in India. Some of the observations that mirror viewpoints of general public in India are discussed below.

In the 114<sup>th</sup> Report on *Gram Nyayalaya* (1986) the Law Commission of India examined that the judicial system suffers from inordinate delays, excessive costs, legal technicalities and even

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<sup>38</sup> [http://pib.nic.in/archieve/ppinti/ppioct2001/low\\_and\\_justice.html](http://pib.nic.in/archieve/ppinti/ppioct2001/low_and_justice.html)

uncertainty of judicial decision. The Commission added that the task of solving the problems of backlog of pending cases in law courts is stupendous.

The observations made in the report of the *Arrears Committee*<sup>39</sup> also reflect the general mindset regarding court system in India:

“.....Settlement of cases by mutual compromise is a much better method than seeking adjudication in the adversary system. Fighting litigation to its bitter and final end apart from generating tension and leaving a trail of bitterness, burdens the parties with heavy financial expenditure. Besides, the successful party has to wait for years before enjoying the fruits of litigation. Results in consonance with justice, equity and good conscience can sometimes be achieved by having a mutual settlement of the dispute than by inviting the court to decide a case one way or the other.....”

To examine the court work methods and work environment and to suggest improvements thereof, the National Judicial Pay Commission<sup>40</sup> engaged the services of Indian Institute of Management, Bangalore (IIMB). The IIMB, after an in-depth study concluded that most people having stakes in the judicial work are of opinion that justice delivery system is unsatisfactory or poor. The main reason given by them is the delay in disposal of cases. IIMB ransacked the order sheets of several cases and after carefully analyzing them stated as follows:

1. The time taken to serve summons and emergency notices to defendants varied from three months to three years.
2. The time taken to file written statements ranged from six months to twenty four months.
3. Interlocutory applications caused delays ranging from four months to four years.
4. Framing of issues consumed as much as three years and six months in one case.
5. Other stages that delayed the cases were absence of advocates and, of course, innumerable adjournments given for a variety of reasons.
6. The major causes of delays were "summons not being served on time" and "witnesses not being present in court". For criminal cases, the most widely felt source of delay was "inadequate number of concerned personnel". For civil cases, it was "filing of unwarranted Interlocutory Applications".

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<sup>39</sup> Constituted by the Government of India in 1989 on the recommendation of the Chief Justices' Conference, published by the Supreme Court of India- 1990, at p. 109.

<sup>40</sup> Constituted by Government of India on 1996 on the direction of the Supreme Court given in *All India Judges' Association v. Union of India*, AIR 1992 SC 165. See *Supra* note 17.

7. The delay in most of the cases is due to multiplicity of interlocutory applications, which are not dealt with by the courts promptly.<sup>41</sup>

The above finding concur with the views of several commissions and reinforces the felt need to introduce long over due reforms.

The National Judicial Pay Commission, in its first report submitted in 1999 examined the work methods and environment in courts and noted following difficulties faced in court system that affect the interests of litigant public:

- 1) The Courts are over burdened with work. The experience is that even at the stage of framing of issues, there is no assistance from advocates in most of the courts. Interrogatories are seldom resorted to and very often documents are filed after the commencement of trial with an application seeking permission.
- 2) Advocates produce hindrance in observing the procedure and a very insisting officer is likely to be harassed in many ways. Rules are already there but are not observed because of non-cooperation of various agencies responsible for producing witnesses.
- 3) Considerable long time is being wasted in securing the presence of the parties for the purpose of admission and denial and seeking reply to the interrogatories.
- 4) Language of the Courts: In almost all states, the judicial proceedings in lower courts, are recorded in local language of the state concerned. Proceedings, including evidences are recorded by the *Peshkar* (Reader) in vernacular while the presiding officer either in his own hand or by dictation to the steno-typist records the proceedings in English. On account of implementation of transfer policy of judges of the high courts, generally judges in a high court are from outside the state concerned. The transferee judges, who are not familiar with local language of the State, face considerable difficulty in dealing with cases when the records are only in local language. The translation of all the records into English is an enormous task besides the cost factors and even if it be done, it would cause delay in disposal

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<sup>41</sup> Chapter 24, Report of First National Judicial Pay Commission (1999), <http://www.kar.nic.in/fnjpc/cwcm&adr.html>



of cases. Therefore, language is also in a way becomes a hindrance in the way to attain speedy disposal of cases.<sup>42</sup>

The above submissions and large pendency discussed earlier, adds substance to the fact that the common man's perception of the capacity of the judicial system to deliver is one of skepticism, if not total cynicism. And therefore, people are looking forward in developing Alternative Dispute Resolution modes, which will minimize the overall time and cost of a person, while maximizing the time available at one's disposal. This is evident from the fact that a considerable litigation burden has been shifted to the hybrid variety of ADR modes developed in the country during last five decades.<sup>43</sup>

#### 4. Problems of the Court System

Various problems with which Indian court system is ailing may be summed up as under:

**Overburdened judiciary:** The court system in India, which is based on adversarial model of common law, is cumbersome, expensive and cumulatively disastrous. It is overburdened. It has to tackle with voluminous pending as well as fresh litigation arising everyday. The hierarchy of courts, with appeals after appeals adds to the magnitude of the problem.

**Inadequacy of judiciary to meet the challenges of total population:** Inadequate judge strength throughout the country is the similar biggest factor for huge backlog of cases. Added to this difficulty is sluggishness shown by the high courts and various state governments in filling up the vacancies of judges on time.<sup>44</sup> As on December 2001, there were 15.14 % vacancies in the subordinate courts, high courts and the Supreme Court of India out of total 13140 judge posts.<sup>45</sup>

**State is the largest litigator:** The central and state governments are the single largest litigants, abetted by government owned corporations, semi-government bodies and other statutory organizations. In Bombay High Court alone, there were as many as 1,205 writ petitions filed

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Infra* Chapter II, p. 26.

<sup>44</sup> *Needed, an internal umpire*, the Hindu, 6-8-2000, p.11

<sup>45</sup> *Supra* note 19.

against these bodies between January 1 to June 7, 2000- excluding those filed on the appellate side, while total number of suits filed is 2,402.<sup>46</sup>

**Adversarial character of administration of justice:** In its structure and organization, the administration of justice in India as at present in vogue has the stamp of 'Made in U.K.'. It is adversarial in character. It renders the position of a judge to a passive listener, a sort of umpire in a game of cricket, denying him active participation in unravelling the truth. And the court battle is conducted according to medieval rules of evidence.

**Time taken in disposal of cases:** One of the major flaws of India is the delay in its legal system. The average time taken by the Indian courts for deciding case varies between 5 to 15 years. In *The Guinness Book of Records* there is an entry, which says that the most protracted law suit ever, recorded was in India: A "Mahant", who is a keeper of a temple, filed a suit in Pune in 1205 AD and the case was decided in 1966 -761 years later!<sup>47</sup>

In spite of the constitutional guarantees, judicial decisions and the reports by various high powered Committees the concept of speedy justice has remained an elusive goal. About 0.18 million under-trials are in jail because of the non-disposal of the cases in time. The Government has to spend to the tune of Rs. 3,610 million per year on this.<sup>48</sup>

**Complex reasons for pendency:** Lack of responsiveness and transparency in administration, increase in access to information and institution of cases, rise in population, radical changes in the pattern of litigation, multifarious litigation, inadequate strength of judges/judicial officers, adjournments, etc. Inadequate judge strength throughout the country is the similar biggest factor for huge backlog of cases.

**Constant pressure and demoralizing of TRIAL COURTS :** That the trial judges in India work under a charged atmosphere and constantly under a psychological pressure has been even judicially recognized. In *K.P. Tiwari v. State of M.P.*<sup>49</sup>, the Supreme Court observed:

" . . . . . The lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly up to their nostrils. They do not have the benefit of

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<sup>46</sup> Subhash Kothari, *Courting Disaster: A case for Judicial Reform*, Times of India, 28-6-2000, p.14.

<sup>47</sup> Manoj Mitra, Indian Express, July 26, 2001.

<sup>48</sup> Solipetta Ramachandra Reddy (Andhra Pradesh): Member of Parliament, PIB Release, November 08, 2001.

<sup>49</sup> 1994 Supp (1) SCC 540.

a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however, gross it may look, should not, therefore, be attributed to improper motive."

Another unique problem of Indian court system is that appellate courts demoralize subordinate courts by reversing judgments and decrees passed by these courts and adverse remarks in the judgment itself are made regarding propriety of subordinate judiciary. The higher judiciary looks down upon it. Appellate courts do not approach the case for the first time. The raw materials for the appellate court are already collected, assembled and focussed unlike in the trial court. The appellate court hears only the oral arguments in a tension free atmosphere and it has plenty of time to come to conclusion. There is enough time for the appellate court to think and re-think on any legal issue. There is a qualitative difference in the variety, novelty and method in the decision-making by the appellate court. Apart from that, unlike in the trial court, the appellate court generally have substantial contribution from the well-prepared lawyers. The assistance given to the appellate court generally is far better than the assistance given to the trial court. However the power of the appellate courts is used most frequently to find fault with the trial judge in each and every matter of the decision-making. Trial judges are treated with very little respect, even though it is not proper for the appellate court to make derogatory remarks against trial judge.

In *Braj Kishore Thakur v. Union of India and Others*<sup>50</sup>, justice K.T. Thomas speaking for the Supreme Court while deprecating the caustic and severe censure made by the single judge of the Patna High Court against the Senior District and Sessions Judge of Bihar Judicial Service, observed:

"Judicial restraint is a virtue. A virtue, which shall be concomitant of every judicial disposition. It is an attribute of a Judge, which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors, which could possibly have crept in the findings or orders of courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre."

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<sup>50</sup> (1997) 4 SCC 65, at 66 and 70.

The learned Judge added:

"No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when judges of higher courts publicly express lack of faith in the subordinate judges. It has been said, time and again, that respect for judiciary is not enhanced by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher court to defend his order, judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary."

In *State of Rajasthan v. Prakash Chand & others*<sup>51</sup>, deprecating the tendency of certain judges in making disparaging and derogatory remarks in intemperate language, it was observed:

"The foundation of our system which is based on the independence and impartiality of those who man it, will be shaken if disparaging and derogatory remarks are permitted to be made against Brother Judges with impunity. It is high time that we realise that the much-cherished judicial independence has to be protected not only from outside forces but also from those who are an integral part of the system. Dangers from within have much larger and greater potential for harm than dangers from outside. We alone in the judicial family can guard against such dangers from within. One of the surer means to achieve it is by the Judges remaining circumspect and self-disciplined in the discharge of their judicial functions."

In *R.C. Sood v High Court of Judicature at Rajasthan*<sup>52</sup>, justice B.N. Kirpal, after tracing the history of the case of the petitioner, who was a senior district judge belonging to Rajasthan Judiciary, found fault with the Rajasthan High Court for taking a decision to ruin the Petitioner's judicial career. The learned Judge observed:

" . . . . . We have no doubt that the action taken by the Court was not bona fide and amounts to victimisation. This is certainly not expected from a judicial forum, least of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its judicial functions. ....The High Court acted in the manner which can only be termed as arbitrary and unwarranted, to say the least....."

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<sup>51</sup> (1998) 1 SCC 1

<sup>52</sup> AIR 1999 SC 707

A pernicious practice prevails as of now, wherein some judges particularly of some high courts while hearing appeals, writ petitions, or revision petitions against the orders and judgments of the trial court, summon the trial judges to the high court to explain in open court as to why they have written the judgments in that manner. The trial judges are required to be present at their own cost before the learned judges in the open court in the midst of the bar members and public to explain their judgments. It is a great embarrassment and humiliation to the trial judges. The First National Judicial Pay Commission, has recommended for abolition of such practices altogether.<sup>53</sup>

**Low Conviction Rate:** The average conviction rate of crimes under the Indian Penal Code has been 39.02 per cent as per the information from the National Crime Records Bureau of the Ministry of Home Affairs. This rate of conviction has been constant from 1995 to 1999. The reasons for poor conviction rate are attributed to the nature of the procedural laws, practices and procedures followed by criminal courts and the inadequacies of the investigating and prosecuting agencies.<sup>54</sup>

## 5. Direction of Judicial Reform

India has a long history of dispensation of justice and consequently that of judicial reforms. In the ancient period, when religion and customary law occupied the field, reform process had been ad hoc and not institutionalized through duly constituted law reform agencies. With the advent of British rule, significant judicial developments and reforms took place. A uniform and well-organized judicial system came to be established for the whole country, which was later inherited on becoming independent on August 15, 1947. After independence, judicial reforms continued in the direction of betterment of the society. The Government has endeavored constantly to bring about improvements in the functioning of courts by simplifying procedures for delivering cost effective and speedy justice.

**General reforms:** Various steps taken by the Government for the speedy disposal of cases include amendment of the procedural statutes<sup>55</sup>, increase in the number of posts of judges,

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<sup>53</sup> *Supra* note 42.

<sup>54</sup> *Low Conviction Rate In Criminal Cases*, August 22, 2001, PIB Release;  
<http://pib.nic.in/archieve/ireleng/1yr2001/raug2001/22082001/r220820012.html>

<sup>55</sup> Civil Procedure Code, 1908 and the Code of Criminal Procedure, 1973.

judicial officers, establishment of special courts, tribunals, computerization of courts and adoption of alternative dispute resolution modes, which are discussed below one by one.

**Reforms at court level:** In the supreme court of India - the highest court of the country, established since January 26, 1950, reforms have taken place since last five decades - in the form of increase in the strength of judges from 13 to the present strength 26; relaxation of the rule of locus standi; recognition of class actions<sup>56</sup>; assumption of power to award exemplary costs;<sup>57</sup> etc. The Court itself has adopted reformist approach. Even in regard to appointment of judges of the Supreme Court, the Government has no freedom of choice of candidates. The Government is bound to act upon the recommendation of the Chief Justice of India, which is supported by the majority view of four senior-most puisne judges of the Supreme Court.<sup>58</sup> In no other country, the opinion of the Apex Court has been given such primacy in the matter of appointment of judges.<sup>59</sup> The Supreme Court, by its own judge-made law and procedure, has become one of the most powerful Institutions. It is not a court of limited jurisdiction for only dispute settlement, like the Supreme Court in any democracy. Almost from the beginning, the Supreme Court has been a law maker, albeit, in Homes' expression "interstitial" law maker. Besides the role of dispute settling and interstitial law making, the Court is a problem-solver in the nebulous areas.<sup>60</sup> It also steps in as an intervener where the executive fails to perform its obligations.

The country moved on from 3 high courts established during the British rule to 21 high courts in 2001.

**ADR Movement :** In the 1970s, interest in making dispute resolution more accessible yielded the alternative dispute resolution (ADR) movement in India. Hybrid varieties of ADR have since increased, and most judicial reform projects today include mediation or arbitration programs. Besides, *Lok Adalats* have been given statutory base as supplementary forum for resolution of disputes.<sup>61</sup>

**Legal aid:** The direction of judicial reforms also includes the path traveled to attain legal aid in India. Since 1952, the Government of India started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines

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<sup>56</sup> *S.P. Gupta v. Union of India* 1981 Suppl 87.

<sup>57</sup> *Rudul Sah v. Union of India* (1983) 4 SCC 141.

<sup>58</sup> *Special Reference No.1 of 1998*: (1998) 7 SCC 739.

<sup>59</sup> Felix Frankfurter, J., "Nature of Judicial Process of Supreme Court Litigation", 98 Proceedings AM Phil Society 233 (1954).

<sup>60</sup> *Supra* note 49.

<sup>61</sup> *Infra* Chapter II, p. 30, 31.

were drawn by the Government for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the chairmanship of a Judge of the Supreme Court of India. Provision for free legal aid was made for any person belonging to the poor section of the society having annual income of less than rupees 18,000/- or Scheduled Caste or Scheduled Tribe, or a victim of natural calamity, or a woman or child or a mentally ill or otherwise disabled person or an industrial workman, or is in custody including custody in protective home from the legal aid boards functioning in the district courts, high courts and the Supreme Court. As on 30.12.2001, about 39,91,855 persons have benefited through court-oriented legal aid programmes.<sup>62</sup>

**Recommendations made by the Law Commission of India:** The Law Commission of India's recommendations also form the basis on which judicial reforms are carried out in India. The Law Commission of India is a non-statutory body constituted by the Government from time to time. The Commission was originally constituted in 1955 and is reconstituted every three years. The Law Commissions have so far submitted 175 Reports. All 175 Reports have since been laid in the Parliament. 91 Reports have been implemented so far, and 51 Reports are presently under consideration for implementation.<sup>63</sup>

Besides, Law Commission, recommendations are made for improvement by other commissions also. For example, the 11<sup>th</sup> Finance Commission gave directions to the government to take specific measures to tackle backlog of cases. Accordingly the government made arrangement made arrangements for setting up the Fast Track Courts and *Lok-Adalats* at various places.<sup>64</sup>

**Joint cooperation :** The Government of India and the Government of United Arab Emirates signed an agreement on Judicial and Judicial Cooperation in civil and criminal matters on October 25, 1999, making it possible to serve summons and other judicial documents issued by the courts of one party in the territory of the other party. The courts of both the parties can also execute decree and arbitration awards passed in each other's territory. Such co-operation is very useful in expediting criminal cases, where in accused – offender has escaped to another country and taken refuge over there.<sup>65</sup>

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<sup>62</sup> *Ibid.*

<sup>63</sup> <http://www.nic.in/lawmin/legalcon.htm#LAW%20COMMISSION>

<sup>64</sup> *Supra* note 61.

<sup>65</sup> *Supra* note 38.

**Increasing the number of tribunals:** At present, there is move to increase the number of tribunals as well the number of benches of the existing tribunals. This is done for reducing burden on the existing tribunals. For instance, the Appellate Tribunal for Foreign Exchange was set up at New Delhi on June 2000 and the number of Benches of Income Tax Appellate Tribunal (ITAT) has been increased from 38 to 53 in keeping with the policy of the Government to provide inexpensive, easy and quick justice at the door-steps of citizens. The creation of additional Benches is expected to bring down the pendency of cases before the Tribunal, which at present stands at 2,40,745 (as on 01.06.2001).<sup>66</sup>

**Increasing the number of Benches of high courts :** A Bench of Guwahati High Court at Itanagar in Arunachal Pradesh has been set up with effect from August 12, 2000. Similarly, a Bench of Madras High Court at Madurai and Calcutta High Court at Jalpaiguri are underway.<sup>67</sup>

**Fast track courts:** Fast Track Courts are being set up in each district of the country. These courts are taking up, on priority, Sessions cases pending for two years or more and cases involving under-trials who are in jails. It is hoped that this scheme will help in reducing the backlog of cases. As the

scheme involves construction of courtrooms and appointment of judges, States are setting up these courts in a phased manner. So far, more than 800 Fast Track Courts have been set up in the states and UT.<sup>68</sup> Out of 41,374 cases transferred to fast track courts 11,580 cases have been disposed of by these courts as per the information available from eight states only.<sup>69</sup>

**Computerization of courts:** The Government has launched two new plan schemes for networking of the Department of Justice in the Ministry of Law, Justice and Company Affairs with the Supreme Court and all the high courts as well as computerization of courts in four metropolitan Cities of Delhi, Kolkata, Chennai and Mumbai in the current financial year 2001-2002.<sup>70</sup> When the project is completed, it will give the Department of Justice online access to information of pendency and other related matters in the Supreme Court and high courts, reducing thereby the time-lag in the flow of information to a great extent. Once the courts are computerized, people would be able to file their petitions and complaints addressed to the courts

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<sup>66</sup> <http://www.nic.in/lawmin/legalcon.htm#INCOME%20TAX%20APPELLATE%20TRIBUNAL>

<sup>67</sup> *Supra* note 38.

<sup>68</sup> <http://pib.nic.in/archieve/lreleng/lyr2001/rnov2001/12112001/r121120011.html>

<sup>69</sup> *Law Minister Expresses Centre's Concern Over Tardy Progress Of Fast Track Courts*, PIB Release, October 30, 2001 <http://pib.nic.in/archieve/lreleng/lyr2001/roct2001/30102001/r301020012.html>

<sup>70</sup> *Computerized Inquiry Counter in high courts*, PIB Release, November 08, 2001: <http://pib.nic.in/archieve/lreleng/lyr2001/rnov2001/08112001/r081120012.html>



at a central filing and facilitation counter. Notices and cause-lists would be made available by the computer. Thus, the litigant would know the date of hearing of his or her case from the computerized enquiry and facilitation counter or through e-mail on internet. Copies of orders, including interim orders would be available through the computer to the interested party on payment of fee. The entire proceedings of a case would also be on the computer network. It is expected that computerization and networking of courts would expand the capacities of the courts substantially thereby speeding up the delivery of justice to the litigating public.<sup>71</sup> Presently, out of 21 high courts, 11 are computerized.<sup>72</sup> Video linkage of courts and prisons, have been launched in the State of Andhra Pradesh to assist in early disposal of criminal cases.<sup>73</sup>

**Recognition of class action in India, more popularly known as PIL:** In India we can identify three waves of reform aimed at making the formal right to justice effective. The first wave consisted of efforts to make legal aid and advice more available to the poor; the second phase promoted representative actions and other procedures that would allow a single lawsuit to resolve a large number of claims; and the third wave addressed broad reform to the legal system, including alternative dispute resolution, small claims courts, and other procedural change.

The second wave that included the development of class action suits, liberalized rules on who can bring different kinds of representative actions to court. The public interest and social action litigation permitted greater representation of collective interests. Class action lawsuits, allow large numbers of similar claims to be aggregated. Their economic rationale is clear: group suits reduce the systemic cost of litigating multiple claims, while making awards available to individuals for whom pressing an individual claim would not be cost-effective, particularly when small sums are at stake. At the same time, relaxed criteria for legal standing in the 1980s permitted new public interest firms to raise suits on behalf of consumers, victims of environmental damage, and other groups of "diffuse interests". At present, environmental regulations are most commonly enforced by way of PILs in India.<sup>74</sup>

**Case Management in the Courts:** In an attempt to reduce the excessive cost and delay of civil litigation, courts throughout India are taking a more active role in managing their cases. The process ordinarily begins with the court requiring to the counsel for the parties to schedule a

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<sup>71</sup> PIB Release, December 2001, <http://pib.nic.in/archieve/ireleng/1yr2001/rdec2001/12122001/r121220012.html>

<sup>72</sup> PIB Release, June 4, 2001, <http://pib.nic.in/archieve/ireleng/1yr2001/rjun2001/04062001/r040620011.html>

<sup>73</sup> <http://www.andhrapradesh.com/>

<sup>74</sup> The movement of PIL started from the case of *S. P. Gupta* case (1981 Supp SCC 87) and continues till today.

meeting with one another shortly after the lawsuit has been filed. Counsels are directed to discuss the merits of the case, identify key legal issues, explore ways in which the case can be resolved using non-traditional dispute resolution mechanisms, and explore ways in which the parties can exchange information as efficiently as possible. Counsel are then required to file a written statement summarizing the results of their meeting and to make any case management suggestions they wish to the court.<sup>75</sup> The case management procedures and techniques being utilized by the Supreme Court of India following are note worthy:

- 1) Using written motions to eliminate claims, either in whole or in part, by presenting legal issues to the judge for a decision before trial.
- 2) Requesting the parties to stipulate or agree on certain legal or factual issues that are not seriously in dispute, so that the trial of the case can be streamlined and future proceedings can focus on the principal disputed issues.
- 3) Combining a number of cases which involve the same or similar issues into a single consolidated proceeding in which those common issues can be resolved at the same time.
- 4) Separating a case into two or more parts, for pretrial or trial purposes, to minimize delay and expense and to facilitate settlement negotiations after the conclusion of the initial proceedings.
- 5) Using a court-appointed expert to assist the court in understanding technical or complex factual issues that are in dispute.<sup>76</sup>
- 6) Appointing a Court Master to preside over a particular portion of a case, to take evidence if appropriate, and to make proposed findings of fact to the court.<sup>77</sup>

The above methods have helped the Court in reducing the pendency. The above process help in resolved disputes more quickly and to the mutual satisfaction of all the parties.

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<sup>75</sup> *Supra* note 41.

<sup>76</sup> Bhure Lal Committee, appointed by the Supreme Court of India, to assess viability of pollution free fuels. *Infra* Chapter –V, p. 193.

<sup>77</sup> As appointed by the Court in *Express Newspaper (P) Ltd. v. Union of India* (1986) 1 SCC 259; *Delhi High Court v. Atul Kumar Sharma* (2001) 9 SCC 108.